

Independent Ethics Commission – Formal Complaint Form

Before the Independent Ethics Commission
of the State of Colorado

For Commission Use Only

Received date: 06-Jul-2020

Case. No.: 20-18

The Complainant is: Janece Culver and West Slope Advocate CO
(name)

Mailing Address: 320 Denny Ct
Montrose, CO 81401

Daytime telephone number: 313-268-1350

Email address: westslopeadvocate@gmail.com

The Respondent is: David Bowman
(name)

Mailing Address: 1107 Highland Drive
Montrose, CO 81401

Daytime telephone number: 970-275-4183

Email address: dbowman@cityofmontrose.org

When did the alleged violation occur: the evenings of July 5, 2019, August 2, 2019, September 6, 2019

Describe the specific acts or things complained of, with facts that provide a full understanding of the alleged violation(s). If possible, cite the specific ethical standards alleged to have been violated and describe how the violation(s) occurred. Use additional pages if necessary. Attach any documentary evidence you wish to submit.

Complaint text to also be attached:

Then Montrose Mayor and current City Councilor Dave Bowman dictated a fee to be paid by Janece Culver's business, Divot's restaurant, during the City of Montrose sponsored Montrose Summer Music Series (MSMS). Bowman used his position and power of office for monetary gain. In addition, as Mayor, Bowman dictated payment terms in a fashion that was considered intimidating by Culver; as Culver was quoted in local media related to the payment demands, "I didn't think I had a choice." The ethical breaches as part of this complaint occurred during a series of free to the public concerts organized by Montrose Summer Music Series, Inc., (Bowman being the registered principle), and were held at the City of Montrose owned Black Canyon Golf Course. The restaurant Divot's is located on the premise of the golf course, and since February 2019 Divot's leases the space from the City of Montrose. The City of Montrose is a core sponsor of the MSMS event, which we believe also includes cash consider

Description of acts or things complained of (continued):

to Bowman's production company (the city, in its non-transparent manner, will require a citizen CORA request to get the details). The ethical breaches occurred at a city owned facility and as part of a city operating lease.

The cash amounts Divot's paid to Bowman's company were directly tied to alcohol sales. As part of the three concert dates listed in this complaint, the total consideration in question is \$3,637 (checks included with the submission). Bowman provided beer cups, he was compensated \$1 for the cup and \$1 for each beer fill (\$2 for the initial customer purchase and \$1 for each refill). Bowman also 50 cents for each can of beer sold.

The payments being tied to alcohol sales adds an additional wrinkle to this complaint. As an elected City Councilor, Bowman sits on the local liquor board as a voting member. In fact, Bowman is the signer on the two Divot's liquor licenses (one license for in restaurant sales and one license for on premises sales beer cart and music events). By requiring Divot's to pay based on alcohol sales, Bowman forced Culver to violate the Divot's liquor license. In early 2020 the principled Culver self-reported her liquor license violation to the Colorado Liquor Enforcement Division, along with reporting the full situation to agents. Bowman directly violated his duty as a member of the local liquor board.

What may also be considered noteworthy to this situation is after the June 2019 MSMS concert, Culver contacted her City of Montrose agent, Assistant City Manager Ann Morgenthaler, to express her concerns and discomfort with the Bowman payment arrangement. This is an important timestamp because City Hall is now aware of the payment situation, including the July, August, and September events noted in this complaint. It was messaged by Morgenthaler, back to Culver, that she spoke to City Manager Bill Bell about the situation, but Culver never had direct contact with Bell. City Hall did not act in any manner to correct this situation to protect Divot's, nor did they address this issue with the whole of City Council (per City Council's public letter published July 1, 2020). Because of the intimidating nature of this situation (mayor approaches lease holder at a city owned facility, city hall does not remedy after being notified), Culver felt obligated to continue the payments through the rest of the 2019 concert series. Even after the conclusion of the 2019 concerts, when Culver went back to Morgenthaler to seek a resolution, Morgenthaler failed to properly follow up with any viable answer or solution.

By Bowman's own omission in the Montrose Daily Press news article from May 30, 2020 he was contacted by Colorado Liquor Enforcement on May 11, 2020 but did not make City Council aware of this contact (again referencing the City Council July 1st letter). We do not know if liquor enforcement also

Advisement regarding remedies and penalties: Pursuant to Colo. Const. art. XXIX, § 6, a covered individual found to have breached the public trust for private gain is liable for double the amount of the financial equivalent of any benefits obtained by such actions. The manner of recovery and additional penalties may be provided by law. The Commission does not assess criminal penalties, award injunctive relief, or award damages to complainants.

I hereby acknowledge that the facts presented herein are true to the best of my knowledge, and I will cooperate in the process regarding this complaint and will appear at any proceeding of the Independent Ethics Commission if the complaint is scheduled for a hearing.

Signature: Janece Culver, Scott Damman (West Slope Advocate CO)

Attorney (if applicable): _____

Dated at Montrose (9:59 AM) (City), Colorado, this 5 day of July 5, 2020.

Created by Article XXIX of the Colorado Constitution, the Independent Ethics Commission may review and hold hearings on matters falling within its jurisdiction as outlined in Article XXIX.

Complaint filed:

Then Montrose Mayor and current City Councilor Dave Bowman dictated a fee to be paid by Janece Culver's business, Divot's restaurant, during the City of Montrose sponsored Montrose Summer Music Series (MSMS). Bowman used his position and power of office for monetary gain. In addition, as Mayor, Bowman dictated payment terms in a fashion that was considered intimidating by Culver; as Culver was quoted in local media related to the payment demands, "I didn't think I had a choice."

The ethical breaches as part of this complaint occurred during a series of free to the public concerts organized by Montrose Summer Music Series, Inc., (Bowman being the registered principle), and were held at the City of Montrose owned Black Canyon Golf Course. The restaurant Divot's is located on the premise of the golf course, and since February 2019 Divot's leases the space from the City of Montrose. The City of Montrose is a core sponsor of the MSMS event, which we believe also includes cash consideration to Bowman's production company (the city, in its non-transparent manner, will require a citizen CORA request to get the details). The ethical breaches occurred at a city owned facility and as part of a city operating lease.

The cash amounts Divot's paid to Bowman's company were directly tied to alcohol sales. As part of the three concert dates listed in this complaint, the total consideration in question is **\$3,637** (checks included with the submission). Bowman provided beer cups, he was compensated \$1 for the cup and \$1 for each beer fill (\$2 for the initial customer purchase and \$1 for each refill). Bowman also was compensated 50 cents for each can of beer sold.

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What may also be considered noteworthy to this situation is after the June 2019 MSMS concert, Culver contacted her City of Montrose agent, Assistant City Manager Ann Morgenthaler, to express her concerns and discomfort with the Bowman "payment arrangement". This is an important timestamp because City Hall is now aware of the payment situation, including the July, August, and September events noted in this complaint. It was messaged by Morgenthaler, back to Culver, that she spoke to City Manager Bill Bell about the situation, but Culver never had direct contact with Bell. City Hall did not act in any manner to correct this situation to protect Divot's, nor did they address this issue with the whole of City Council (per City Council's public letter published July 1, 2020). Because of the intimidating nature of this situation (mayor approaches lease holder at a city owned facility, city hall does not remedy after being notified), Culver felt obligated to continue the payments through the rest of the 2019 concert series. Even after the conclusion of the 2019 concerts, when Culver went back to Morgenthaler to seek a resolution, Morgenthaler failed to properly follow up with any viable answer or solution.

By Bowman's own omission in the Montrose Daily Press news article from May 30, 2020 he was contacted by Colorado Liquor Enforcement on May 11, 2020 but did not make City Council aware of this

contact (again referencing the City Council July 1st letter). We do not know if liquor enforcement also contacted City Hall on May 11th, and if so, why City Hall did not report this inquiry into City Council.

The contractual terms and obligations of the Divot's lease with the City of Montrose may also be note worthy to this situation. There are performance clauses included where Divot's owes the city a percentage of profit. By Bowman eating into the Divot's profit, he also monetarily damaged the City of Montrose. It should be noted that the near \$6000 total amount paid to MSMS, Inc. in 2019 significantly cut into the net profit of the Divot's business. The lease contract will be added to the complaint record for full review. There are additional details within the lease contract that may be relevant to this complaint.

We hope this complaint submission helps identify what we see as an ethic breach from an elected official, an abuse of power, and a shake-down of a small business owner operating under a city contract and under city infrastructure. While the focus of this complaint is David Bowman, we are very concerned by the non-action of Montrose city administration when informed of what was occurring. This has been a very troubling topic to many in the Montrose Community. We welcome any questions or conversations to help fill in the details.

Janece Culver

Scott Damman of West Slope Advocate CO

Divot's
1350 Birch St.
Montrose, CO 81401
(970) 248-0252

Alpine Bank

1090

82-340/1021

7/8/19

PAY TO THE
ORDER OF

Montrose Summer Music Series

\$ 1053.50

one thousand fifty three & ⁵⁰/₁₀₀

DOLLARS

MEMO



[Signature]
AUTHORIZED SIGNATURE

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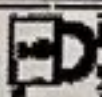
The Within Named Payee

Absence of Endorsement Guarantees

ALPINE BANK EAST MONTROSE

Montrose, Colorado

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE



20190717

ALPINE BANK

Drawn on Trans#: 02905/0016

HIN: 3712350000045

This is a certification report of the Check Payment Systems Association.
The signature listed below as well as those not listed, unexpired
indicate the signature. Absence of these features may indicate alteration.
Purpose:
for the use of the check as a form of payment or as a receipt for
payment.
The signature and the signature of the payee must be identical.
The signature of the payee must be identical to the signature of the payee.
The signature of the payee must be identical to the signature of the payee.
The signature of the payee must be identical to the signature of the payee.

FD-1040 (Rev. 10-2018)
FEDERAL RESERVE BOARD OF GOVERNORS REG. CU

ENDORSE HERE
X-1 Deposit \$5000.24368

INDEPENDENT CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into as of this 15th day of FEBRUARY, 2019, by and between the **CITY OF MONTROSE**, State of Colorado, a Colorado home rule municipal corporation, whose address is 433 S. First Street, P.O. Box 790, Montrose, Colorado 81402-0790, hereinafter referred to as "City" and Janece Culver, doing business as **DIVOT'S**, a Colorado Sole Proprietorship, whose address is 67749 East Borough Drive, Montrose, Colorado 81401, hereinafter referred to as "Contractor"; the aforementioned entities may sometimes be collectively referred to as the "Parties".

WHEREAS, in consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the Parties hereto as follows:

I. SCOPE OF CONTRACTED SERVICES

The Contractor agrees to perform professional services as set forth in Exhibit 'A' attached hereto and incorporated by reference herein.

II. TERMINATION

This agreement will take effect upon execution of this document. The agreement will terminate on December 31, 2020. Parties reserve the option to renew this agreement under terms agreeable to both parties for three consecutive one year terms.

III. COMMENCEMENT AND COMPLETION OF SERVICES

The services to be performed pursuant to this Agreement shall begin on the execution date of this Agreement, or as otherwise indicated in Exhibit 'A,' and be pursued with due diligence as outlined in Exhibit 'A', throughout the term stated above or until otherwise terminated as set forth herein.

IV. CONTRACTOR RESPONSIBILITY

The Contractor shall be responsible for the level of quality, timely completion and coordination of all services rendered by the Contractor, and shall promptly remedy and correct any errors, omissions or other deficiencies. In the process of executing all services rendered under this Agreement, the Contractor must use due care not to cause any damage to public or private property.

- A. Contractor shall be required to comply with all applicable Federal, State and Local safety and health laws, regulations, and ordinances. The City does not assume responsibility for monitoring, directing, or ensuring Contractor's compliance with said laws, regulations, and ordinances; such responsibility shall inure to the Contractor, and shall be a duty of the Contractor under this Agreement. If Contractor fails to meet the terms and conditions of this paragraph City may immediately terminate this agreement after providing a 48 hour cure period or terminate pursuant to Section X.

B. LICENSES AND CERTIFICATES REQUIRED

1. Health Certificate: Contractor shall be required to hold a valid, current Health Certificate from the appropriate licensing authority as a condition precedent to performing catering-related tasks on City-owned property. A copy of said Certificate may be requested by the City at any time during the period for which this Agreement is effective.
2. Liquor License: Contractor shall be required to hold a valid, current liquor license from the appropriate Colorado licensing authority. Contractor shall solely be responsible for ensuring compliance with State and City liquor laws and/or regulations.

V. CITY REPRESENTATIVE

The City designates its Assistant City Manager or her designee as its representative, and authorizes her to make all necessary and proper decisions regarding this Agreement. All requests for contract interpretations, changes, clarifications or instructions shall be directed to the City Attorney.

VI. INDEPENDENT CONTRACTOR

The services to be performed by the Contractor are those of an independent contractor and not an employee of the City. As an independent contractor, Contractor is not entitled to worker's compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits. The Contractor is obligated to pay all federal and state income tax on any moneys paid pursuant to this Agreement.

VII. CONTRACTOR SERVICES

It is understood that the City enters into this Agreement based on the special abilities of the Contractor and that this Agreement shall be considered an agreement for personal services. Accordingly, the Contractor shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the City.

VIII. ACCEPTANCE NOT WAIVER

The City's approval of work, services rendered, and reports furnished hereunder shall not in any way relieve the Contractor of responsibility for the level of quality of the work. The City's approval or acceptance of any services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

IX. DEFAULT

Each and every term and condition shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement, such Party may be declared in default thereof.

X. TERMINATION

City may terminate this Agreement at any time for public health or safety reasons, Contractor will be provided written notice and 48 hours to cure the deficiency. City may otherwise terminate this agreement at its convenience upon giving the Contractor 60 days written notice. Contractor may terminate this Agreement at any time without prejudice to any other right or

remedy, upon giving the City 60 days written notice. In the event of Contractor's termination of this Agreement, Contractor shall have no further obligation to the City. Upon completion of service or termination of this Agreement, Contractor shall deliver unto the City any final reports relating to this Agreement.

XI. INSURANCE

- A. The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- B. Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to City. All coverages shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- C. Worker's Compensation insurance, when required by State law, to cover obligations imposed by the Worker's Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, five hundred thousand dollars (\$500,000) disease policy limit, and five hundred thousand dollars (\$500,000) disease each employee. Evidence of qualified selfinsured status may be substituted for the worker's compensation requirements of this Paragraph.
- D. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.
- E. Professional/Contractor Liability insurance with minimum limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate.
- F. Certificates of insurance shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of services under this Agreement. Each certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the City. Any statement on the certificates which describe this 30-day prior written notice as being less than obligatory shall be stricken by the insurance agent completing the certificates. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- G. Every policy required above shall be primary insurance and any insurance carried by the

City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. An additional insured endorsement is required for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be responsible for any deductible losses under any policy required above.

- H. Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- I. The Parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, (C.R.S. § 2410101 et seq., as from time to time amended, or otherwise available to the City.

XII. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City, its officers and its employees, from and against all liability, claims and demands, on account of injury, loss, or damage, which arise out of or are in any manner connected with the services hereunder, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the act, omission, or other fault of the Contractor or any subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or of any subcontractor, or any other person for which Contractor is responsible. The Contractor shall investigate, handle, respond to, and provide defense for, and defend against any such liability, claims and demands, and bear all other costs and expenses related thereto, including court costs and attorney fees. The obligation of this Paragraph XII shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the City, its officers, or its employees.

XIII. INTEGRATION & SEVERABILITY

- A. This Agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.
- B. If any provision of this Agreement is held invalid, illegal or unenforceable, the Parties shall negotiate in good faith so as to replace each invalid, illegal or unenforceable provision with

a valid, legal and enforceable provision which will, in effect, from an economic viewpoint, most nearly and fairly approach the effect of the invalid, illegal or unenforceable provision and the intent of the Parties in entering into this Agreement.

XIV. THE FOLLOWING PROVISIONS ARE REQUIRED BY HB 06-1343, AS AMENDED BY HB 07-1073 and SB 08-139:

- A. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- B. Contractor shall not enter into a contract with a Subcontractor that fails to certify to the Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall, within twenty (20) days of hiring a new employee during the term of this Agreement, cause a written, notarized copy of its affirmation of said employee's status to be sent to the Owner.
- C. Contractor hereby affirms that it has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the e-verify program, ("e-verify program" means the employment verification program authorized in 8 U.S.C. 1324a, as amended, that is administered by the United States Department of Homeland Security, or the "department program"). If the Contractor is not accepted into the e-verify program, prior to entering into this Agreement, the Contractor shall apply to participate in the e-verify program every three (3) months until the Contractor is accepted or this Agreement has been completed, whichever is earlier. Contractor is prohibited from using the e-verify program procedures to undertake preemployment screening of job applicants while this Agreement is being performed. This subparagraph "C" shall not be effective if the e-verify program is discontinued.
- D. If the Contractor obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to: (a) notify the Subcontractor and the City within three (3) days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontract with the Subcontractor if within three (3) days of receiving the notice required pursuant to section (a) of this subparagraph, if the Subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the Subcontractor if during such three (3) days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.
- E. Contractor shall comply with any reasonable request by the applicable State agency or department made in the course of an investigation that said agency or department is undertaking pursuant to its lawful authority. If Contractor violates a provision of this Section XIV, City may terminate this Agreement for material breach. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to City. City is required by State law to notify the Office of the Secretary of State if Contractor violates a provision of this Section XIV, and City terminates this Agreement for that reason.

XV. MISCELLANEOUS PROVISIONS

- A. Each Party hereto agrees to cooperate in all reasonable respects necessary to consummate

the transactions contemplated by this Agreement, and from time to time to do such acts and things and execute and deliver such documents and instruments as may reasonably be required in order to implement the transactions contemplated hereby. Each Party hereto agrees to cooperate in the execution of subsequent addenda, or to re-execute an amended version of this Agreement, in the event that a Party discovers: 1) a clerical error; or 2) a misinterpretation of law; or 3) an error as to form; when such error(s) obviate or hinder the consideration, performance or enforcement of this Agreement.

- B. Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or sub-granted without prior, written consent of City. Any attempt at assignment, transfer or sub-granting without such consent shall be void. All assignments, Sub-grants, or Sub-grantees approved by Grantee or the City are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of sub-granting arrangements and performance. Ownership transfers in excess of 20% will require City approval in writing.
- A. Parties shall be contacted as listed below:

City of Montrose


Ann Morgenthaler, Asst. City Manager
amorgenthaler@ci.montrose.co.us
(970) 901-6059

Contractor

Janece Culver
janecec@yahoo.com
(970) 275-1373

EXECUTED AND EFFECTIVE the date above first written.

CITY OF MONTROSE


Ann Morgenthaler, Asst. City Manager

CONTRACTOR


Janece Culver, Owner/Operator of Divot's

STATE OF COLORADO)
) SS.
COUNTY OF MONTROSE)

The foregoing instrument was acknowledged before me this 15th day of February, 2019,
by **Ann Morgenthaler**, Assistant City Manager.

Witness my hand and official seal.
My commission expires: 03/12/2023



Lisa DelPiccolo
Notary

STATE OF COLORADO)
) SS.
COUNTY OF MONTROSE)

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by **Janece Culver**, Owner/Operator of Divot's.

Witness my hand and official seal.
My commission expires: 03/12/2023



Lisa DelPiccolo
Notary

EXHIBIT "A"

SCOPE OF SERVICES

Scope of Services:

Contractor will assume operations of the restaurant at the Black Canyon Golf Course effective upon execution of this Independent Contractor and Professional Services Agreement.

Contractor agrees to provide full restaurant and bar service, with menu items, fermented malted beverages, wine and mixed drinks as mutually agreed upon by the Contractor and the City, beginning no later than April 6, 2019.

Contractor agrees that the use of the restaurant for any off-site catering or food preparation for off-site events requires written permission from the City in advance of such activities.

The City agrees to allow Contractor to utilize the restaurant space at Black Canyon Golf Course free of rent or utility costs through April 1, 2019. Contractor agrees to pay 67% of the monthly utility fees for the pro-shop and restaurant building beginning on April 1, 2019 and continuing thereafter every month of the year.

Contractor agrees to provide the City a 1% share of net profits between April 1, 2019 through September 30th, 2019, and during the same time period in future years should this Agreement be extended. Revenue from all sales, including private parties, will be included in the calculation of net profits. This payment is expected by the 15th of the month following the month it is accrued. Profit sharing will be increased 1% each year thereafter up to a maximum of 3%, should the City and Contractor agree to extend this Agreement.

Contractor agrees to provide a monthly Financial Statement of golf course restaurant operations to the Assistant City Manager, no later than the 10th day of every month. Such Statement shall be provided by email and Contractor shall copy the Finance Director. The Statement shall include Profit & Loss Reports and detailed Revenue & Expense Reports.

Contractor agrees to operate the restaurant seven (7) days a week all year long. During the off-season, which is February 1 – March 31 and November 1 – December 31, minimum hours will be from 11:00am to 2:00pm. During peak season, which is April 1 – October 31, minimum hours will be from 7:00am to 6:00pm. Contractor may be open for extended hours if desired. Minimum requirement of hours are subject to negotiations during off-season.

Contractor agrees to accommodate special events and extended hours as necessary for tournaments, leagues and special event activities.

Contractor agrees to keep tables and dining area available for general use when not in operation.

Contractor agrees to operate the facility with high standards regarding food and beverage service, and maintain the restaurant premises in compliance with all federal, state and local laws.

Contractor accepts responsibility for ordering all supplies, food and beverage for the restaurant.

Contractor agrees to promote Black Canyon Golf Course special events (including but not limited to golf tournaments and promotional sales) and Contractor special events (including but not limited to live music, parties, food and drink specials, as examples) through social media.

The Black Canyon Golf Course agrees to support Contractor's endeavor through periodic press releases and other marketing associated with the marketing of golf course operations.

Contractor agrees to supplement restaurant décor with golf related décor at the discretion of the City.

Contractor accepts responsibility for all daily cleaning, to include restrooms, seating area, kitchen, and storage rooms. The City agrees to provide janitorial service to the facility twice per week.

Contractor accepts responsibility for any damage that occurs to City-owned equipment beyond normal wear, or loss of City-owned equipment, including but not limited to point of sale system equipment, iPads, and point of sale computer and kitchen equipment. Such damage or loss shall require compensation from contractor to repair or replace the equipment.

Contractor agrees to operate the beverage cart to accommodate golf course guests as the Golf Course Professional deems necessary, and to provide reliable beverage service to golfers.

The City remains responsible for costs and maintenance associated with City owned equipment.

City will provide indoor and outdoor furnishings for the restaurant. The selection of such furnishings shall be at the City's discretion.

The Contractor agrees that City-owned furniture or equipment shall not be removed from the premises without consent of the City. Indoor furniture may not be used on the patio.

The Black Canyon Golf Course agrees to provide free greens fees and cart to Contractor's employees. Such employees must work regular hours at the golf course restaurant, outside of working special events. In exchange, the Contractor agrees to offer City Employees a 15% discount on all menu items excluding alcoholic beverages, and one free soft drink per City Employee, per visit. This discount is available to City Employees seven (7) days a week, and is valid for one meal per day.

Contractor will utilize the restaurant module of the ForeUp point of sale system, or other point of sale system as applicable and as approved by the City, for all sales and inventory. Contractor shall reimburse the City for all credit card fees which are applicable to the restaurant on a monthly basis.

MONTROSE DAILY PRESS

montrosepress.com | Saturday, May 30, 2020

Pandemic curtails fair to junior shows

- **Fair board’s goal: To ensure youths can show livestock**
- **Parade canceled for logistical reasons; rodeo’s fate unknown**
- **Vendors and exhibits precluded by limits on large gatherings**

By KATHARHYN HEIDELBERG
KATHARHYNH@MONTROSEPRESS.COM

Like many 4-H families, the ODonnells were looking forward to this year’s Montrose County Fair and Rodeo.

Mom Tonia ODonnell is the leader of the Black Canyon 4-H Club, and directs about 42 youths who worked hard all year raising their fair animals. For daughter Gabby, who graduated this year, the upcoming fair is the last time she will be able to present. Her sister Becca, an incoming senior, shows chickens and rabbits.

But this year will be different. The COVID-19 pandemic, and its restrictions that include limits on the size of gatherings, prompted the Montrose County Fair Board to pare back the signature summer event to the basics — the junior livestock shows, where youths display their animals and attract potential buyers.

“I’m just glad the fair board is working hard to try to support these kids with their agricultural projects and their general

projects,” Tonia ODonnell said Friday.

She said retaining the shows was especially important for graduating seniors like her daughter, who are aging out of the program, and who lost out on so many other senior-year events, such as traditional graduation ceremonies. “If they could end on this note, being in the ring ... I think that’s important,” ODonnell said.

As part of the pandemic-driven changes, there won’t be any of the open show exhibits that usually fill Friendship Hall for the fair — horticulture, photography, cake-decorating and more. There cannot be a parade. Public entertainment events that usually round out the fair have been nixed. The rodeo royalty contest is postponed. Whether the annual rodeo can take place is up in the air.

“What we’re really doing is trying our best to concentrate on the junior show,” Fair Board President Chris Cohick said.

“Generally, we have all the events, the vendors, all the open shows, in and out of the building. This year, with social distancing and health regulations, there are so many unknowns that we just don’t know what we can count on.

“We’re going to put all efforts into the junior show and into making sure the kids who have worked so hard to prepare their animals can present what they



Macey Sanburg, after being named grand champion of the mustang show at the 2019 Montrose County Fair and Rodeo. This year’s fair is being limited because of the COVID-19 pandemic. (Montrose Daily Press/file photo)

worked so hard for.”

The fair schedule this year has been winnowed down.

According to the most recently provided schedule, the dog show is July 17; ranch gymkhana is July 18, followed by the horse show July 19; swine on July 20; lambs and poultry on July 21; goats and beef on July 22 and the sale on July 25.

Cohick said that because of the rabbit hemorrhagic disease that is hitting wild rabbits, the fair board is unsure of whether to schedule a show for the rabbits participants raise. Although the virus hasn’t been seen in domesticated rabbits, they can contract it and it is fatal. There are issues with other diseases, Cohick said, and the board wants to take all necessary precautions.

Cohick said the board is striving for live shows, to the greatest possible ex-

tent, although COVID-19 restrictions change frequently and may affect the schedule. The strategy includes showing just one species at a time and having participants leave as soon as they have shown their animals.

“If something were to happen were they close things down again, we have backup options of a virtual show, where judges can look at them online and judge them, but that’s our last resort,” Cohick said.

Current Montrose County Fair royalty will have a role in the fair, he said, but the board is for now holding off on new royalty. Contestants would customarily have already been holding events and fundraising, but the pandemic has precluded that, he said.

See **SHOW** page A3

MSMS head Bowman responds to Divot’s liquor complaint

- **Last summer’s agreement was illegal, according to Grand Junction liquor control agent**
- **Conflict arose with Divot’s over collection of partial beer sales proceeds by Summer Music Series**
- **Collaboration between Summer Music Series and Divot’s will not continue**

By MCKENZIE MOORE
MCKENZIE@DELTACOUNTYINDEPENDENT.COM

Last summer, Divot’s at the Black Canyon Golf Course provided liquor during the Montrose Summer Music Series (MSMS) events. The MSMS collected a portion of the proceeds from each beer sold as part of a sponsorship deal with Divot’s, according to MSMS organizer Dave Bowman, which the owner of Divot’s, Janece Culver, felt was unfair. This led to a strained relationship between the two entities that reached a high point when the agreement was revealed to be illegal, according to Colorado liquor laws.

During the concerts, the MSMS had collected \$2 for the first cup of beer purchased (to include the cost of the cups that MSMS had provided); \$1 for each subsequent beer purchased and 50 cents for each can of beer purchased.

Culver later hired an attorney because she was uncomfortable with the situation. The attorney informed her that the arrangement was illegal, at which point Culver turned herself in to the Liquor Enforcement Division in Grand Junction.

Bowman then received a call on May 11 informing him of the complaint and the fact that the arrangement was illegal.

Bowman said that the call was the first he’d heard of the issue, but stopping the agreement immediately and finding a new, legal agreement was “no problem.”

However, he acknowledged that while the issue had arisen from ignorance by both parties, the responsibility ultimately falls into the hands of whoever holds the liquor license.

“We found out that’s illegal. And it was ignorance on the part of the MSMS and myself, but we didn’t own the liquor license,” Bowman said. “It’s illegal for someone with a liquor license to make an agreement with an outside party to give them a percentage of sales. ... With their liquor license, they agreed to something that was outside of their liquor license.”

See **LIQUOR** page A3

Denver mayor says destructive protesters sullied message of demonstration

- **Shooting under investigation**
- **Protesters assembled over George Floyd’s death in Minneapolis**
- **Thirteen arrests made in Denver**

By JESSE PAUL
THE COLORADO SUN

Denver Mayor Michael Hancock said Friday that destructive behavior at Thursday night’s protest of a black man’s killing in Minnesota sullied the message of demonstrators.

He said that such actions will not be allowed.

“When individuals choose the path of violence, it drowns out the peaceful cries for change,” Hancock said at a news conference. “All people will see is the violence, and not the cause people are standing for. ... We will not tolerate violence and damage to



Denver Mayor Michael Hancock on May 5 gives a COVID-19 update. (Pool photo by Kevin J. Beaty/Denverite)

personal and public property. We must demonstrate peacefully.”

Denver police Chief Paul Pazen lauded his officers’ behavior, saying they “demonstrated extreme restraint” as rocks were thrown at them and fires were set. Officers fired nonlethal projectiles and tear gas into crowds.

Hundreds of people descended on the Colorado Capitol and downtown Denver on Thursday night to speak out against the

killing Monday of George Floyd in Minneapolis. Floyd died after an officer knelt on his neck for almost eight minutes in an encounter that was filmed and has been widely viewed.

Friday morning Derek Chauvin, one of the four Minneapolis police officers fired after Floyd’s death, was arrested and charged with third-degree murder and manslaughter.

Three officers were injured during the Denver protest, including one who was taken to a hospital after being hit in the head with a rock, Pazen said.

“They performed in an exemplary manner in order to control a very disruptive and dangerous situation,” Pazen said of his department.

Hancock said Denver police officers “had to defend themselves” and that they were initially planning on being at the protest in a supportive role to ensure demonstrators’ safety.

Authorities say nonlethal force was used only after demonstrators began throwing rocks at police, but they said they believe only a small number of protesters were responsible for the destruction and violence.

Thirteen people were arrested, including for burglary, criminal mischief and assault.

Pazen said an investigation remains ongoing into a shooting that occurred during the protest. A volley of bullets was fired, apparently in the direction of the Capitol, sending demonstrators scattering for cover.

Pazen said no arrests have been made in the shooting.

Police are also investigating a hit-and-run that occurred during the protest and that was caught on video, though no arrests have been made. “We do have some pretty solid evidence with regards to that,” Pazen said.

Hancock said the city will allow demonstrations planned for Friday

and Saturday to move forward, but that police will respond if there is damage or violence.

The mayor also asked people to remember that the coronavirus crisis is still ongoing and that people should stay socially distant as they protest. “The coronavirus is still very much in our community,” he said.

Hancock, who is black, said he understands the pain of demonstrators. He called what happened to Floyd a murder.

“I am proud that you stand up and want to hold people accountable for these types of actions. We stand with you,” he said. “We need to encourage, however, peaceful demonstrations.”

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FROM PAGE A1

"In the board's mind, that (parade) is not going to happen. That would be a nightmare for the

Katharhynn Heidelberg is the Montrose Daily Press assistant editor and senior writer.

FROM PAGE A1

"If we had a short night, we had a short night and we all suffered together. The sponsor didn't get dinged for more

“Yeah, I’m willing to donate,” Culver said. “But the problem I had was that he was putting a price on what my donation had to be. He dictated what I had to

Mckenzie Moore is a staff writer for the Montrose Daily Press.



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FORMER MAYOR'S DEMANDS FOR MONEY LEAVE GOLF COURSE LIQUOR LICENSE HOLDER CALLING FOUL

Divot's Owner Seeks Ruling from Liquor Enforcement Division



Divot's restaurant owner Janece Culver has contacted the state Liquor Enforcement Division (LED) concerning City Councilor Dave Bowman's demands that she pay him a fee for liquor sold during his Montrose Summer Music Series events. Photo by Paul Arbogast.

By Paul Arbogast

MONTROSE—When Divot's owner Janece Culver stood before the Montrose City Council on April 16, 2019 seeking a liquor license for her new restaurant at the Black Canyon Golf Course, City Attorney Stephen Alcorn asked Culver if she would be able to stand up to strong personalities demanding too many drinks. Culver said, "I don't have a problem with that."

Now, Culver is having to stand up to a strong personality on City Council—one who is demanding to profit from the liquor license she now holds.

If you don't know about Divot's, it is the exclusive restaurant and only licensed provider of alcoholic beverages located at the Black Canyon Golf Course. The city contracts out the space now occupied by Divot's, and in early 2019, Culver was awarded the contract to open her restaurant.

Most everyone in town also knows

[Continued pg 19](#)

RUSSELL STOVER PLANT CLOSING IN AUGUST

By Gail Marvel

MONTROSE—The Russell Stover Candies plant in Montrose, which was slated to close in the Spring of 2021, will now close at the end of August. The last day of production will be Aug. 28, 2020; however, the last day of the retail sales store may be sooner. That date has yet to be determined.

Russell Stover Vice President of Human Resources in the Kansas City/Missouri Office, Jim Kissinger, said,

"Back in January we announced we would be closing the plant in March of 2021, but no one could have anticipated COVID-19, or the impact on the economy."



Russell Stover Candies plant will close their doors on Aug. 28, 2020. Photo by Gail Marvel.

[Continued pg 4](#)

in this
issue

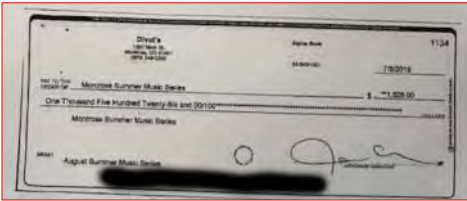
*Reader Photo Spotlight:
With Deb Reimann!*

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FORMER MAYOR'S DEMANDS FOR MONEY LEAVE GOLF COURSE LIQUOR LICENSE HOLDER CALLING FOUL From pg 1



One of the checks Culver was required to write to Mayor Bowman.

about the Montrose Summer Music Series, a free monthly music event put on by Blue Sky Music Presents, LLC., which is owned and operated by City Council member and former Mayor Dave Bowman. Public records show Montrose Summer Music Series is also registered as a non-profit organization.

Though COVID-19 restrictions make this year's live music series uncertain, the Summer Music Series has become a local tradition. Usually around the first week of every month throughout the summer, the golf course is set up with a stage and equipment, and the driving range fills up with people out to enjoy a summer evening filled with music, friends, and family. For many concertgoers, a night of live music is complemented by the beverage served during the event. As Divot's holds the only liquor license permitted at the golf course, they provide the beverages.

This past summer Divot's took care of the license for the Montrose Summer Music Series so that beverages could be available on the golf course for the concerts. But even if virus restrictions are lifted, this coming summer that might not happen.

Culver says she was approached by Mayor Bowman last spring and told that he would be providing cups during the concerts, and she would pay him a dollar for each cup used and for each beer poured.

Being dictated what she had to pay from her own sales did not sit right with Culver, however, and after the first concert she went to the city, expressed her concerns, and related her story. During her first discussions with the city, Culver said it was suggested that if she did not want to continue her involvement, they would carve out an area for a special license/permit for that part of the golf course. Still, Colorado liquor laws require all alcohol sales to be



Divots' patrons on a recent afternoon at the Black Canyon Golf Course. Owner and liquor license holder Janece Culver says that City Councilor Dave Bowman has demanded a cut of her liquor sales during his Montrose Summer Music Series events. Photo by Paul Arbogast.

made by the license holder of that property, and only one license can be granted for any particular property, with very few exceptions.

Culver says that when the second concert of the summer came around, Bowman told her he wanted money from all of her canned beer sales as well. Though Culver informed the city of the situation, no action was taken on her behalf. Still, she decided to continue to sell beer because she had agreed early on to sell drinks for the event. She also begrudgingly continued to write checks to the Montrose Summer Music Series for the rest of the summer.

When the concert series ended for the summer, Culver returned to the city and let them know that she wanted no part of providing alcohol for this summer's concerts if she would be required to pay the Montrose Summer Music Series. Culver says the city suggested she could turn in her liquor license for the day of the concerts, and then have it reinstated the following day each time there was a concert. Convinced that she was being treated unfairly, Culver ultimately hired an attorney. After consulting with her attorney, she realized that the arrangement with Montrose Summer Music Series seemed to be in violation of the law, and with no other alternative being offered by the city, she turned herself in to the Colorado Liquor Enforcement Division (LED).

One of the statutes that applies (44-33-301 (3) C.R.S.) states that licenses are separate and distinct and that only the license holder can exercise the license's privileges. According to the Liquor Enforcement Division, "Outside entities that want to hire the licensee or rent out space would have to pay the licensee for the alcohol and the service, as it would be the licensee's responsibility for the alcohol service on that particular premises."

Culver says it would have been different had Bowman asked for a donation, since the Montrose Summer Music Series is registered as a non-profit. But according to her this was not someone asking for a donation; this was her being told what she needed to pay.

Licensing to sell/serve alcoholic beverages in this state requires approval from both the City of Montrose and the State of Colorado. The City Council has the deciding vote on the local level because they are in fact, the local Liquor Control Board, and are responsible for ensuring compliance with state liquor laws. The issue is now in the hands of the Liquor Enforcement Division (LED). Culver has not been granted any sort of hearing and she does not know where the case stands. For now, she is unsure if she will be serving beverages for this summer's concert series, if it does take place. Alcorn and Bowman were both contacted for comment, but no response was received by press time.



CITY OF MONTROSE



Barbara Bynum, Mayor
Doug Glaspell, Mayor Pro Tem
Roy Anderson, City Council
Dave Bowman, City Council
Doug Frank, City Council
Phone: 970.240.1400

July 1, 2020

What began as a private dispute between City Councilor Dave Bowman, as a board member of a local nonprofit, and Janece Culver, as the owner of Divot's restaurant, has continued to escalate to a level that necessitates a statement from the Montrose City Council.

Mr. Bowman's involvement with the nonprofit Montrose Summer Music Series is unrelated to his council position. If he attempted to use his city council position to influence, coerce or intimidate a local business owner we firmly condemn that behavior. We believe an investigation is warranted and have asked the Montrose Chief of Police to ask the Colorado Bureau of Investigation to investigate. It is our understanding that Ms. Culver has asked the state's Liquor Enforcement Division to investigate. Mr. Bowman also welcomes an investigation in order to establish the facts of the matter.

Mr. Bowman did not provide information about the Montrose Summer Music Series' internal operations to council, nor is he required to. Councilors first learned that there were issues between Mr. Bowman and Ms. Culver when we read local media in late May 2020. Ms. Culver never contacted any city councilors with her concerns.

The State and City of Montrose hold dual licensing authority for issuing liquor licenses. However, the state makes the general rules and regulations, special rulings and findings to regulate the proper manufacture, distribution and sale of alcohol beverages and to enforce the Beer and Liquor Code. Though the City Council and State did jointly grant the liquor license to Divot's, the State maintains oversight of their liquor sales. The City Council will schedule an upcoming work session with the Colorado Liquor Enforcement Division in order to better understand the city's roles and responsibilities in regard to liquor licenses and enforcement.

With the limited information available to Montrose city councilors, it appears this is a private matter between a board member of a local nonprofit, who happens to be a city councilor, and a private business. Going forward, councilors will work to maintain a better separation between our private activities and our roles as city councilors. Councilors welcome a thorough investigation by appropriate state agencies to bring to light any possible inappropriate activity and to ensure the highest standard of professionalism is practiced by all city councilors.

We ask that all media inquiries about this matter be directed to City Communications Director Chelsea Rosty at (970) 250-2189. Thank you.

Barbara Bynum, Mayor
Doug Glaspell, Mayor Pro Tem
Roy Anderson, Councilor
Dave Bowman, Councilor
David Frank, Councilor





COLORADO
Department of Revenue
Executive Director's Office

Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

July 16, 2020

Ms. Scott Damman
320 Denny Ct.
Montrose CO 81401

Dear Mr. Damman:

We are writing in response to your Colorado Open Records Act (CORA) request. You requested the investigative case report related to LED case # 20-0683. The open, responsive documents are attached. Please note that information which is considered Personally Identifiable Information (PII) and which is protected from disclosure under CORA by statute, C.R.S. 24-72- 204 (2) VII and C.R.S. 24-72-204 (3) IX has been redacted. The documents also contain confidential financial data that is prohibited from disclosure via CORA pursuant to C.R.S. 24-72-204(3)(a)(IV).

Regards,
Patrick Harton
CORA Manager



**LIQUOR ENFORCEMENT DIVISION
ALCOHOL & TOBACCO ENFORCEMENT
Department of Revenue**

Case Report

Case Number: 20-0683

Offense Number: 1st Offense

Date of Offense: 6/15/2019

Case Summary

MAIN:

On 04-27-2020, I received information that an unlawful financial interest possibly exists between Janece Culver, d/b/a/ Divot's and the Montrose Summer Music Series. The possible violation was reported by the owner of Divot's, Janece Culver.

Janece Culver, d/b/a/ Divot's currently holds a Hotel & Restaurant / Optional liquor license (#03-116532) and is located at 1350 Birch Street, Montrose on the Black Canyon Golf Course.

During the course of the investigation the following was learned:

1. The Montrose Summer Music Series held four free concerts on the driving range of the Black Canyon Golf Course between 06-07-2019 and 09-06-2019.
2. Janece Culver, d/b/a/ Divot's currently holds a Hotel & Restaurant / Optional liquor license (#03-116532) and is located at 1350 Birch Street, Montrose, on the Black Canyon Golf Course.
3. Divot's utilized cups provided to them by the Montrose Summer Music Series for the sale of alcohol beverages during four concerts held between 06-07-2019 and 09-06-2019.
4. Divot's paid the Montrose Summer Music Series a percentage of the revenue they generated through alcohol beverage sales which were tracked through the use of the cups.
5. Divot's allowed another business (Montrose Summer Music Series - which is registered as a separate non-profit corporation with ID number [REDACTED]) to operate on their liquor licensed premises. The Montrose Summer Music Series shared in a percentage of the revenue generated by Divot's through the sale of alcohol beverages.
6. The Montrose Summer Music Series (David Bowman) sold alcohol without a license when it shared in a percentage of the sale of alcohol beverages by Divot's.

This in violation of the following:

CRS 44-3-301(3)(a), allowing another business to utilize the privileges of a liquor license (Divot's).

CRS 44-3-901(1)(h), sale of alcohol without a license (Montrose Summer Music Series (David Bowman)).

In mitigation, Culver suspected a violation of the Colorado Liquor Code had occurred and self-reported

Case Number: 20-0683

Page 1 of 13



LIQUOR ENFORCEMENT DIVISION
ALCOHOL & TOBACCO ENFORCEMENT
Department of Revenue

the incident. An opportunity was taken to educate all parties involved about the violations that occurred and what steps need to take place to avoid future violations.

A copy of this report will be sent to the Montrose District Attorney's Office to review possible criminal charges against David Bowman for Sale without a License.

LIQUOR LICENSE INFORMATION:

Janece Culver, d/b/a/ Divot's currently holds a Hotel & Restaurant / Optional liquor license (#03-116532) and is located at 1350 Birch Street, Montrose on the Black Canyon Golf Course.

HISTORY OF THE VIOLATOR:

A check of the Liquor Enforcement Division's L.E.D. system indicates Janece Culver, d/b/a/ Divot's has had no violations within the last year. A check with the Montrose City Clerk indicates Divot's has had no local violations within the last year.

CONCLUSIONS AND RECOMMENDATIONS:

It can be concluded that a violation of the Colorado Liquor Code did occur, specifically, CRS 44-3-301(3)(a), allowing another business to utilize the privileges of a liquor license and 44-3-901(1)(h), the sale of alcohol without a license.

In mitigation, Culver suspected a violation of the Colorado Liquor Code had occurred and self-reported the incident. An opportunity was taken to educate all parties involved about the violation that occurred and what steps need to take place to avoid future violations.

A warning letter was mailed to Divot's on 05-27-2020.
05-29-2020 LM

Violations

44-3-301(3)(a) - Exercising the privileges of a liquor license

44-3-413(14)(a) - Prohibited Intrest H&R

44-3-901(1)(h) - To manufacture, sell or possess for sale unless licensed to do so

Taxpayer Location Information

JANECE CULVER

Sales Tax License [REDACTED]

D/B/A DIVOT'S

Liquor Number: 03-11653

1350 BIRCH STREET

MONTROSE, CO 81401

(970) 275-1373

Case Number: 20-0683

Page 2 of 13



LIQUOR ENFORCEMENT DIVISION
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Department of Revenue

Involved Persons

Violator:

Janece Culver

DOB: [REDACTED] Age: [REDACTED]

Height: N/A Weight: N/A

Hair Color: Eye Color:

State: CO

CO

Home Phone Number: N/A

Business Phone Number: N/A

Cell Phone Number: [REDACTED]

Violator:

David K. Bowman

DOB: N/A

Height: N/A Weight: N/A

Hair Color: Eye Color:

State: CO

CO

Home Phone Number: N/A

Business Phone Number: N/A

Cell Phone Number: [REDACTED]



LIQUOR ENFORCEMENT DIVISION
ALCOHOL & TOBACCO ENFORCEMENT
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Other: Dan Carr
DOB: N/A
Height: N/A Weight: N/A
Hair Color: Eye Color:
State: CO

CO
Home Phone Number: N/A
Business Phone Number: (303) 282-4119
Cell Phone Number: [REDACTED]

Primary Investigator: Jarrett Broughton II
632 Market Street, Suite G#
Grand Junction , CO 81506
(970) 248-7519
jarrett.broughtonii@state.co.us

Investigator: Brian Turner
632 Market Street Suite G
Grand Junction, CO 81506
(970) 248-7133
brian.turner@state.co.us

Investigator Narratives

Investigator: Jarrett Broughton II
Title: Case Report

DETAILS OF THE OFFENSE:

On 04-27-2020, I was made aware of a possible unlawful financial interest between Divot's and the Montrose Summer Music Series that needed to be further investigated.

The subsequent investigation of Divot's focused on the following alleged violation of the Colorado Liquor Code and Colorado Regulations: Divot's had an unlawful financial interest in another business by paying the Montrose Summer Music Series a percentage of the revenue they generated



LIQUOR ENFORCEMENT DIVISION
ALCOHOL & TOBACCO ENFORCEMENT
Department of Revenue

through alcohol beverage sales and Montrose Summer Music Series (David Bowman) sold alcohol without having a valid Colorado Liquor License.

Janece Culver, d/b/a/ Divot's currently holds a Hotel & Restaurant / Optional liquor license (#03-116532) and is located at 1350 Birch Street, Montrose on the Black Canyon Golf Course.

Montrose Summer Music Series, LLC, d/b/a Montrose Summer Music Series is a non-profit corporation in good standing formed on 06-03-2015, with its principal office located at 1107 Highland Drive, Montrose. David K. Bowman is the registered agent.

VIDEO CONFERENCE WITH JANECE CULVER AND DAN CARR:

On 04-27-2020, Agent in Charge (AIC), Brian Turner, and I, Criminal Investigator, Jarrett Broughton, participated in a video conference with the owner of Divot's, Janece Culver, and her attorney, Dan Carr, with Dill Dill Carr Stonebraker & Hutchings, P.C., regarding Culver's concern she may have violated Colorado Liquor Code by having a direct or indirect unlawful financial interest with the Montrose Summer Music Series (MSMS) in the summer of 2019. Culver advised she wanted to self-report the possible violation because she was concerned how it may impact Divot's liquor license. I asked Culver how long she had been the owner of Divot's. Culver told me she took over the ownership of Divot's in February of 2019. I asked Culver to explain to me what had happened with the Montrose Summer Music Series and why she thought a violation of the Colorado Liquor Code may have occurred. Culver told me during the summer of 2019, the MSMS held four free concerts on the driving range of the Black Canyon Golf Course which is included on the optional premise of Divot's liquor license. The free concerts were held on 06-07-2019, 07-05-2019, 08-02-2019 and 09-06-2019. Culver told me before the first concert was held she was approached by then Montrose Mayor and registered agent of MSMS, David K. Bowman, regarding cups he had made up for the concerts. Culver told me Bowman told her she had to use the cups he was providing her and she had to pay MSMS for each cup she used. I asked Culver what she meant and how much she had to pay. Culver told me she was told by Bowman she had to use the cups to sell alcohol beverages in and that Bowman kept track of how many cups were used. Culver told me she had to pay one dollar (\$1.00) for every new cup, one dollar (\$1.00) for every refilled cup, and fifty cents (.50) for every can of beer she sold during the concerts. Culver told me the amount she had to pay from the use of the cups was considered her donation to the MSMS which she told me was a non-profit organization.

I asked Culver if she used the cups Bowman provided to her and then paid the MSMS the amount asked of her by Bowman. Culver told me she did use the cups and did pay Bowman. I asked Culver how she paid. Culver told me she paid the MSMS by check and she could provide me copies of the checks if I would like. I asked Culver to email me copies of the checks and provided her with my contact information. I asked Culver if she felt she reserved the right to refuse to use the cups or make the donation to the MSMS. Culver told me Bowman said to her "this is what you're gonna do" but at no time did she feel threatened or that she had to "go along" with what he told her. I asked Culver why she did what Bowman asked of her. Culver told me she "wanted to keep the peace" and that Bowman was the Mayor of Montrose at the time and sat on the "liquor board."

I asked Culver if she had spoken to anyone at the City of Montrose regarding the MSMS and her participation in the event. Culver told me she had spoken to the Assistant City Manager, Ann Morgenthaler. Culver told me Morgenthaler had suggested to her that if she did not want to participate in the MSMS the City of Montrose could suspend her liquor license on the days of the concerts and issue special event permits. Culver told me she did not agree to this because she



LIQUOR ENFORCEMENT DIVISION
ALCOHOL & TOBACCO ENFORCEMENT
Department of Revenue

thought it might be in violation of the Colorado Liquor Code.

I asked Culver what outcome she was expecting as a result of this investigation. Culver told me she was willing to donate to the MSMS but did not want Bowman to "define" what that donation was to be. Culver told me Bowman had treated her employees "rudely" during the concerts and that she thought it was "immoral" Bowman had dictated to her how much she would have to donate to the MSMS. Culver told me she thought a violation of the Colorado Liquor Code had occurred and wanted to self-report the potential violation out of concern how it may impact Divot's liquor license.

I asked Culver if any of what she had told had been written down or communicated by email. Culver told me all her communications with Bowman were verbal only and no written records were kept.

Culver had no further information and this concluded our conversation.

REVIEW OF DIVOT'S LICENSING FILE AND LEASE AGREEMENT:

On 04-27-2020, Carr emailed a copy of Divot's lease with the City of Montrose who owns Black Canyon Golf Course. A copy of the lease is included in this report (Exhibit A). I reviewed Divot's licensing file and the lease Carr provided and found the following information:

1. Janece Culver is the sole owner of Divot's.
2. Divot's entered into a lease with the City of Montrose on 02-15-2019, and will terminate on 12-31-2020, with the option for three, one year extensions.

PHONE CONVERSATION WITH DAN CARR:

On 05-08-2020, I spoke, via phone, with Dan Carr. After introducing myself, I asked Carr if he would be willing to speak to me regarding some follow up questions I had regarding my investigation. Carr agreed to speak to me. I asked Carr if Divot's had donated any alcohol to the MSMS. Carr told me no alcohol had been donated. I asked Carr if Culver had felt forced into using the cups provided by Bowman. Carr told me Culver was not told "do this or else" but, because Bowman was then Mayor of Montrose and on the "liquor board," she felt Bowman had made it "loud and clear" she was going to participate. I asked Carr what Colorado Liquor Code violation he thought had been violated. Carr told me he thought there was a direct or indirect unlawful financial interest in that Divot's paid the Montrose Summer Music Series a percentage of the revenue they generated through alcohol beverage sales.

Carr had no further information and this ended our conversation.

REVIEW OF MONTROSE SUMMER MUSIC SERIES:

On 05-08-2020, I reviewed the MSMS record in the State of Colorado Secretary of State business search and learned the following:

1. Montrose Summer Music Series, LLC, d/b/a Montrose Summer Music Series is a non-profit corporation in good standing formed on 06-03-2015 (ID number [REDACTED]), with its principal office located at 1107 Highland Drive, Montrose. David K. Bowman is the registered agent.

REVIEW OF CHECKS PAID BY DIVOT'S TO THE MONTROSE SUMMER MUSIC SERIES:

On 04-30-2020, I received an email from Culver. The email contained five attachments each showing a copy of a check paid to the MSMS by Divot's. I reviewed each check and found the



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following:

1. Check # [REDACTED] was dated 06-13-2019, and paid to the order of Montrose Summer Music Series in the amount of \$1,300. There was no memo or additional notes on the check (Exhibit B).
2. Check # [REDACTED] was dated 07-02-2019, and paid to the order of Montrose Summer Music Series in the amount of \$450.00. A memo on the check states "food vendors" (Exhibit C).
3. Check # [REDACTED] was dated 07-08-2019, and paid to the order of Montrose Summer Music Series in the amount of \$1053.00. There is no memo or additional notes on the check (Exhibit D).
4. Check # [REDACTED] was dated 07-08-2019, and paid to the order of Montrose Summer Music Series in the amount of \$1,526.00. A memo on the check states "August Summer Music Series" (Exhibit E).
5. Check # [REDACTED] was dated 09-10-2019, and paid to the order of Montrose Summer Music Series in the amount of \$1,045.00. A memo on the check states "Sept. 6 Concert Beer Sales" (Exhibit F).

PHONE CONVERSTATION WITH DAN CARR:

On 05-11-2020, I spoke, via phone with, Carr. After identifying myself, I asked Carr to speak to me regarding my investigation. Carr agreed to speak to me. I advised Carr a violation of the Colorado Liquor Code did occur in that Divot's had a direct or indirect unlawful financial interest in the MSMS. I also advised Carr Divot's had allowed the MSMS to utilize the privileges of their liquor license. I asked Carr if he could communicate with Culver and advise her she could no longer share a percentage of the revenue generated through alcohol sales with the MSMS. I advised Carr that Culver could make a donation to the MSMS in an amount she chose. Carr agreed to speak to Culver and asked me if I was going to speak to Bowman. I told Carr I would speak to Bowman as well.

PHONE CONVERSATION WITH DAVID K. BOWMAN:

On 05-11-2020, I spoke, via phone, with Bowman. After identifying myself, I asked Bowman if he would be willing to speak to me regarding my investigation into the relationship between Divot's and the MSMS. Bowman agreed to speak to me. I told Bowman I was investigating a complaint alleging Divot's had donated a percentage of its alcohol beverage sales to the MSMS in 2019. I asked Bowman if the MSMS had provided cups to Divot's to sell alcohol beverages in. Bowman told me the MSMS did provide "special" cups to Divot's. I asked Bowman why the cups were provided. Bowman told me the MSMS provides concerts to the public free of charge and in order to do this they must get sponsors who are willing to make donations to cover the costs. Bowman told me Divot's was asked to be a sponsor because they are located at the Black Canyon Golf Course where the concerts are held. Bowman told me Divot's was told how much they needed to donate in order to cover the cost. I asked Bowman to explain the purpose of the cups. Bowman told me the cups were used by Divot's as a way to raise their donation. Bowman told me during the concerts Divot's would raise the price of alcohol beverages by one dollar which was then paid to the MSMS in the form of a donation. Bowman told me the cups were used as a way to track how much money was raised through the sale of alcohol beverages by Divot's. I asked Bowman if Divot's reserved the right to refuse to be a sponsor or use the cups. Bowman told me Divot's did reserve the right to refuse. Bowman told me Divot's benefited financially from the MSMS holding the concerts at the Black Canyon Golf course through increased patronage during the concerts. At this time, I advised Bowman Divot's could choose to make a donation to the MSMS but it could no longer donate a percentage of its alcohol sales to the MSMS. Bowman told me this is the way it has been done. I advised Bowman it could no longer be done this way. Bowman told me if the MSMS could not raise enough donations to cover its cost it may have to move the concert venue or cancel



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the event altogether. I advised Bowman that was a conversation he would need to have with the City of Montrose and potential sponsors.

I also advised Bowman Divot's was violating the Colorado Liquor Code by allowing the MSMS to exercise the privileges of Divot's liquor license. I advised Bowman the MSMS is sharing in a percentage of the revenue generated by Divot's through the sale of alcohol beverages. Bowman told me it "may be for the best" and easier if the MSMS no longer holds concerts at the Black Canyon Golf Course because they would no longer have to keep track of cups or be concerned with getting enough donations. Bowman had no further information and this concluded our conversation.

On 06-02-2020, Bowman was advised, via voice mail, the Montrose Summer Music Series, and him personally, sold alcohol without a liquor license when it shared in a percentage of the sale of alcohol beverages by Divot's.

This case will be forwarded to the Montrose County District Attorney's Office for case review and possible criminal charges against David Bowman for Sale without a License.

SUMMARY:

During the course of the investigation the following was learned:

1. The Montrose Summer Music Series held four free concerts on the driving range of the Black Canyon Golf Course between 06-07-2019 and 09-06-2019.
2. Janece Culver, d/b/a/ Divot's currently holds a Hotel & Restaurant / Optional liquor license (#03-116532) and is located at 1350 Birch Street, Montrose, on the Black Canyon Golf Course.
3. Divot's utilized cups provided to them by the Montrose Summer Music Series for the sale of alcohol beverages during four concerts held between 06-07-2019 and 09-06-2019.
4. Divot's paid the Montrose Summer Music Series a percentage of the revenue they generated through alcohol beverage sales which were tracked through the use of the cups.
5. Divot's allowed another business (Montrose Summer Music Series - which is registered as a separate non-profit corporation with ID number [REDACTED]) to operate on their liquor licensed premises. The Montrose Summer Music Series shared in a percentage of the revenue generated by Divot's through the sale of alcohol beverages.
6. The Montrose Summer Music Series (David Bowman) sold alcohol without a license when it shared in a percentage of the sale of alcohol beverages by Divot's.

VIOLATIONS:

Based on the evidence there is probable cause the following violations occurred between 06-07-2019 and 09-06-2019:

44-3-301(3)(a).



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Each license issued under this article 3 and article 4 of this title 44 is separate and distinct. It is unlawful for any person to exercise any of the privileges granted under any license other than the license the person holds or for any licensee to allow any other person to exercise the privileges granted under the licensee's license, except as provided in section 44-3-402 (3), 44-3-403 (2)(a), 44-3-404, or 44- 3-417 (1)(b). A separate license must be issued for each specific business or business entity and each geographic location, and in the license the particular alcohol beverages the applicant is authorized to manufacture or sell must be named and described. For purposes of this section, a resort complex with common ownership, a campus liquor complex, a hotel and restaurant licensee with optional premises, an optional premises licensee for optional premises located on an outdoor sports and recreational facility, and a wine festival at which more than one licensee participates pursuant to a wine festival permit is considered a single business and location.

CRS 44-3-901(1)(h)

(1) Except as provided in section 18-13-122, it is unlawful for any person:

(h) To manufacture, sell, or possess for sale any alcohol beverage unless licensed to do so as provided by this article 3 or article 4 or 5 of this title 44 and unless all licenses required are in full force and effect;

EXHIBIT LIST:

Exhibit A - Lease
Exhibit B - Check # [REDACTED]
Exhibit C - Check # [REDACTED]
Exhibit D - Check # [REDACTED]
Exhibit E - Check # [REDACTED]
Exhibit F - Check # [REDACTED]
Exhibit G - Email from DDA Zentner

LIQUOR LICENSE INFORMATION:

Janece Culver, d/b/a/ Divot's currently holds a Hotel & Restaurant / Optional liquor license (#03-116532) and is located at 1350 Birch Street, Montrose on the Black Canyon Golf Course.

HISTORY OF THE VIOLATOR:

A check of the Liquor Enforcement Division's L.E.D. system indicates Janece Culver, d/b/a/ Divot's has had no violations within the last year. A check with the Montrose City Clerk indicates Divot's has had no local violations within the last year.

CONCLUSIONS AND RECOMMENDATIONS:

It can be concluded that a violation of the Colorado Liquor Code did occur, specifically, CRS 44-3-301(3)(a), allowing another business to utilize the privileges of a liquor license and 44-3-901(1)(h), the sale of alcohol without a license.

In mitigation, Culver suspected a violation of the Colorado Liquor Code had occurred and self-reported the incident. An opportunity was taken to educate all parties involved about the violation



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that occurred and what steps need to take place to avoid future violations.

A warning letter was mailed to Divot's on 05-27-2020.

Investigator: Jarrett Broughton II
Title: Supplemental: Email to DDA Zentner

SUPPLEMENTAL:

On 06-05-2020 at approximately 1520 hours, I spoke, via phone, with 7th Judicial District Deputy District Attorney Robert T. Zentner regarding this report and if his office was interested in reviewing it. Zentner told me his office was interested and would review a copy of this report. I emailed a copy of this report in pdf format to robert.zentner@co7da.org. DDA Zentner acknowledged he received the copy of the report. This concluded our phone conversation.

Investigator: Jarrett Broughton II
Title: Supplemental: Reply from DDA Zentner

SUPPLEMENTAL:

On 06-14-2020 at approximately 2141 hours, I received an email from 7th Judicial District Deputy District Attorney Robert T. Zentner regarding his office's review of this report (Exhibit G). DDA Zentner advised his office would not file criminal charges against either party referenced in this report. Zentner advised his office does not believe there is a risk of continued noncompliance with liquor law due to both parties having learned much about liquor laws and given the timeframe that has passed since the incident.